



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,581	02/05/2004	Brian P. Carney	14281.IUSU1	2269
7590	11/04/2005			EXAMINER
Merchant & Gould P.C. P.O. Box 2903 Minneapolis, MN 55402-0903			OKEZIE, ESTHER O	
			ART UNIT	PAPER NUMBER
			3652	
DATE MAILED: 11/04/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/772,581	CARNEY, BRIAN P.
	Examiner	Art Unit
	Esther O. Okezie	3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 August 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-28 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-28 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed on 8/8/05 and the remarks presented therewith have been carefully considered. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application Publication 2004/0150236 A1 of Hobel et al.

Re claims 1,4,5,6,11,16,22,26, Hobel et al discloses hawk or mixing palette for applying mortar, comprising: a substantially flat piece of material defining a holding surface area (1) being continuously contoured in a dished-out manner to facilitate the retention and carrying of mortar (fig 1c).

Hobel et al does not disclose the dimensions of the device. Since these dimensions are provided so that masonry tools can slide over the upper surface area without encumbrance as described in Applicant's disclosure, it would have been obvious to one of ordinary skill in the art to construct the dimensions of the mixing palette so that a Mason's tool could slide over the upper surface area without encumbrance to pickup mortar.

1. Re claim 2, including a carrying handle (3)
2. Re claim 3, the material defines a cut-out area portion to form the handle (fig 3a).
3. Re claim 7, the material includes two side edges and a bottom edge, and the holding surface area extends to the side and bottom edges of the material (fig 1a).
4. Re claim 8, including a carrying handle (3)
5. Re claim 9, the material defines a cut-out area portion to form the handle (fig 3a).
6. Re claims 10, 21 the material includes two side edges and a bottom edge, and the holding surface area is separated from the side and bottom edges of the material by a raised peripheral lip (fig. 1c)
7. Re claim 12, 23 the material includes a bottom surface that has supporting ribs (5) formed integrally with the material (figs 2a and 2b).
8. Re claim 13, the material includes a bottom surface that is configured to accommodate a support stand (see figs 4a, 4b, and 5 for palette on support stand).
9. Re claims 14,15,24,25, it is not clear what material the palette is formed from. It would be obvious to form the palette from plastic or a polymer because many polymers are low weight, inexpensive, and high in durability.
10. Re claim 17, 27 the palette is rectangular (fig 1c).
11. Re claim 18, 28 the material is configured so that the palette will nest together and they can be stacked (fig 5).
12. Re claim 19, a substantially flat piece of material defining a holding surface area (1) being continuously contoured in a dished-out manner to facilitate the retention and

Art Unit: 3652

carrying of mortar (fig 1c), wherein the material defines a cut-out area portion to form the handle (fig 3a).

13. Re claim 20, the holding surface is substantially flat (fig 1a).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection as described above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
EILEEN D. LILLIS  
SUPPLEMENTAL PATENT EXAMINER  
TECHNOLOGY CENTER 3600

Y00 10/30/05